

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 917

Case No. 99-4

(*Sua Sponte* Review of Board of Zoning Adjustment Application No. 16426)

September 13, 1999

This Decision and Order arises from the *sua sponte* review by the Zoning Commission for the District of Columbia of an order issued by the Board of Zoning Adjustment (BZA) that granted BZA Application No. 16426, concerning a request by Seung W. Hong pursuant to 11 DCMR § 3107.2, for a variance under 11 DCMR § 741 to construct an automobile repair service center in a C-3-C District at premises 21 L Street, S.W. (Square 648, Lot 22).

PROCEDURAL HISTORY

This variance application was filed with the BZA on December 18, 1998. A letter in opposition was filed on February 4, 1999 by Mr. Joseph Nathanson, owner of property abutting the subject site. Advisory Neighborhood Commission (ANC) 2D submitted a letter indicating that the ANC had voted unanimously in favor of the application at its properly noticed meeting of February 8, 1999, with a quorum present.

Pursuant to notice, the BZA held a hearing on April 21, 1999. Testimony was heard from the applicant. At the conclusion of the hearing, the Board rendered a bench decision to grant the use variance. On June 11, 1999, the Board issued a Summary Order granting the application by a vote of three to one. The Order stated the Board's conclusion that the applicant had met the burden of proof, pursuant to 11 DCMR § 3107, that there existed an exceptional or extraordinary situation or condition relating to the property that created an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief could be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The requirement of 11 DCMR § 3331.1, which provides that orders of the Board must be accompanied by findings of fact and conclusions of law, was waived.

By letter dated April 30, 1999, then Zoning Commissioner Angel F. Clarens requested that the Commission review the Board's decision, *sua sponte*, pursuant to 11 DCMR § 3101. Mr. Clarens was the member of the Commission who sat on the Board hearing the application. At its regularly scheduled meeting of June 14, 1999, the Commission

decided to invoke its *sua sponte* review authority in this matter, and took a unanimous vote to stay the order of the Board.

By letters dated September 10, 1999, the Office of Zoning sent notice on the Commission's action to members of the BZA, the applicant and ANC-2D. The letters also requested written submissions on the regulations governing this case and the reasons why the Board's decision should not be overturned. Responses were received October 22, 1999 from Sheila Cross Reid, Chairperson of the Board, from the applicant, and from ANC-2D.

FINDINGS OF FACT

1. The subject property is located at 21 L Street, S.W. (Square 648, Lot 22) in the South Capitol area of Ward 2.
2. The property is zoned C-3-C, Major Business and Employment Centers.
3. The C-3-C district is a medium-high density commercial zone that permits a maximum floor area ratio of 6.5, a maximum height of 90 feet, and a maximum lot occupancy of 100 percent. 11 DCMR §§ 770.1, 771.2, 772.1.
4. A repair garage is permitted in any C-3 district if approved by the Board, through the special exception process, in accordance with conditions specified in 11 DCMR § 3108.
5. A repair garage is first allowed as a matter-of-right in the commercial-light manufacturing (C-M) district. 11 DCMR § 801.7(h).
6. The applicant requested a use variance to be granted by the Board in order to construct and operate an automotive repair service center on the site. The applicant's only ground for requesting a variance was the "appropriateness" of his property for an automobile repair service center.

CONCLUSIONS OF LAW

The Zoning Regulations provide that no decision or order of the Board shall take effect until 10 days after having become final pursuant to Board rules. 11 DCMR § 3103.1. Within that 10-day period, the Commission may *sua sponte* determine to review any order or decision of the Board. 11 DCMR § 3103.2. In this case, the Board's order became final on June 11, 1999, and the Commission promptly decided three days later to invoke its *sua sponte* review authority and to stay the Board's order.

The Commission may exercise its direction for *sua sponte* review when (1) the Board exceeded its prerogatives and thus in effect changed the zoning, (2) the basic policy of the Commission, as expressed in the Zoning Regulations, was violated as a result of

Board action, or (3) in an unusual instance, as determined by the Commission. 11 DCMR § 3103.8. Upon *sua sponte* review, Commission action may include, among other things, reversal of the Board's action and remanding the case to the Board for reconsideration, rehearing, or other action. 11 DMCR § 3103.5.

The Commission concludes that this case is "an unusual instance" in that the Board applied a use variance standard when the application should have been considered a request for a special exception. A repair garage is permitted in a C-3 district if approved by the Board, pursuant to the special exception process. 11 DCMR § 743.1. By considering the application a request for a use variance, the applicant was improperly required to meet the more difficult burden of proof for a use variance, which requires a showing that undue hardship would result from the strict application of the Zoning Regulations to the property, rather than the more lenient special exception showing that the proposed use would be in harmony with the general purpose and intent of the Zoning Regulations and Map and would not tend to affect adversely the use of neighboring property. 11 DCMR § 3108.1. Therefore, the Commission reverses the Board's order in BZA Application No. 16426 and remands the application for rehearing as a request for a special exception, pursuant to 11 DCMR § 743.1.

The Board may grant a special exception where the exception would be in harmony with the general purpose and intent of the Zoning Regulations and Map and would not tend to affect adversely the use of neighboring property in accordance the Zoning Regulations and Zoning Map. 11 DCMR § 3108.1. On remand, all parties and interested persons will be afforded an opportunity to offer testimony and evidence in support of or in opposition to a request for a special exception allowing operation of an automotive repair service center on the applicant's property.

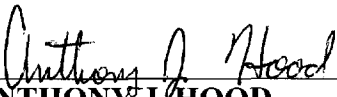
The Commission has accorded ANC-2D the "great weight" to which it is entitled. The record reflects that the affected ANC voted unanimously to support the application. However, the ANC's testimony addressed the criteria for a use variance and not the standards applicable to a request for a special exception. On remand to the Board, the ANC may submit additional testimony addressing whether an automobile repair service center would be in harmony with the general purpose and intent of the Zoning Regulations and Map and would not tend to affect adversely the use of neighboring property.

DECISION


In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS** that the Summary Order of the Board of Zoning Adjustment granting a variance in BZA Application No. 16426 be **REVERSED AND REMANDED** for further consideration as an application for a special exception.

This Order was adopted by the Zoning Commission at its regular public meeting on September 13, 1999 by a vote of 4 to 0 to approve: (Angel F. Clarens, Anthony J. Hood, Herbert M. Franklin, and John Parsons, to adopt).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the District of Columbia Register, that is on **FEB 25 2000**.



ANTHONY J. HOOD
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning